

## CHAPTER 7

# WHAT YOU CAN DO AFTER THE COURT FILES ITS OPINION

After an opinion has been issued, there are a number of steps you can take asking the Court of Appeal and/or the Supreme Court to reexamine the case. This chapter discusses some of those, including, how to file a *Petition for Rehearing* at the Court of Appeal and a *Petition for Review* in the Supreme Court of California. In addition, this chapter explains how the issuance of a remittitur marks the end of an appeal.

### Petition for Rehearing

After the opinion in the appeal is filed, a party may file a *Petition for Rehearing* ([Sample Form S](#)) in the Court of Appeal. The petition for rehearing provides the party that has “lost” at the Court of Appeal with an opportunity to point out any factual errors, misstatements, or omissions that the Court of Appeal may have made in their opinion. There is an automatic right to rehearing if the Court of Appeal makes a decision based on an issue that was not proposed or briefed by any party. (Government Code section 68081.) One does not need to petition for rehearing in the Court of Appeal before seeking review in the Supreme Court. However, as a policy, the Supreme Court accepts the statement of facts and issues as set out in the Court of Appeal opinion unless any alleged omission or misstatement of fact was brought to the Court of Appeal’s attention by a petition for rehearing. (CRC rule 28(c).)

The *Petition for Rehearing* must be served and filed within 15 days of the filing of the opinion, the order for publication, or the modification of the opinion if it changes the judgment. No opposition to the petition may be filed unless requested by the court. If the Court does not rule on a petition for rehearing it will be deemed denied “by operation of law” (that is, automatically without any order of any kind from the court). (CRC rule 25(b) and 25(c).)

The petition should not merely repeat information and argument that was covered by the appeal. Instead, it should focus on specific errors or contradictions in the opinion.

Normally the court does not consider points or issues being raised for the first time on rehearing, with two exceptions: when you are arguing the superior

court or the Court of Appeal did not have the power (jurisdiction) to handle the case, or when the Court of Appeal, in an exercise of its discretion, agrees to consider new materials (such as a new case) that were not included earlier.

Generally, the petition for rehearing should be directed at errors in the opinion: a major misstatement of fact, an error of law, major law or facts that were left out, and/or an important argument that was not included.

The petition for rehearing must be bound with orange covers. The original and four copies should be filed with the Court of Appeal along with Proof of Service ([Sample Form C](#)) on all parties; one copy should go to the superior court, and four copies to the Supreme Court. (CRC rules 15(c) & 44(b)(2)(A).) The Court of Appeal has jurisdiction (power to make rulings in the case) for 30 days from the date the opinion was filed *or* a request for publication was granted *or* an opinion was modified that changed the judgment. (CRC rule 24(b), 25(b).)

## **Review in the California Supreme Court**

The Court of Appeal's decision becomes final 30 days after the filing of its opinion or the grant of publication or modification of the opinion with a change in judgment. A modification stating it does not change the judgment does not add time to the usual 30 days from filing of the opinion. A petition for review in the California Supreme Court must be filed within 10 calendar days after the decision becomes final. The first day starts with the 31st day. Thus, if the Court of Appeal's decision becomes final on a Friday, then Saturday and Sunday are days 1 and 2 of this 10-day period during which the petition for review must be filed. (CRC rules 24(b), 28(e).)

At the beginning of the petition you should start with a brief statement of the issues to be presented, with an explanation why this case is one the Supreme Court should take for review. (CRC rule 28.1(b).) If produced on a computer, the petition may not exceed 8,400 words or 30 pages if typewritten and must contain a certificate of compliance. The maximum length does not include exhibits and the copy of the Court of Appeal opinion that must be included. (CRC rule 28.1(b)(e).) Petitions for Review should have white covers, while Answer to Petitions for Review should have blue covers. An original and 13 copies must be filed in the Supreme Court. (CRC rule 44(b).) A proof of service must be attached to the original and all copies showing service on the division of the Court of Appeal which decided the case, all parties, and the trial judge.

An answer is not required unless the party opposing review wants to add an issue. An answer should be filed within 20 days after the petition is filed. (CRC rules 28(a)(2), (e)(4), (f).)

If the Supreme Court grants review, it may put off action while awaiting disposition of another case, or specify issues that are to be briefed. (CRC rules 28.2(c), 29(a).) Within 30 days the petitioner must file an opening brief or the same brief it filed in the Court of Appeal. The opposing party then has 30 days to file an answer or a copy of the brief filed in the Court of Appeal. A reply brief, if filed, is due within 20 days. (CRC rule 29.1(a).)

The Second District Court of Appeal does not accept Supreme Court filings. However, the Supreme Court has a clerk's office in the same building as the Court of Appeal in Los Angeles at 300 S. Spring St. Also, filings can be made directly with the Supreme Court at 350 McAllister St., San Francisco, CA, 94102. For further information concerning the Supreme Court, call (213) 830-7570 (Los Angeles) or (415) 865-7000 (San Francisco).

Review by the California Supreme Court is extremely rare. Unlike the Court of Appeal, the Supreme Court is not required to hear all cases filed before it. The review process allows the Supreme Court to choose the cases it wants to hear. Generally, the granting of review is limited to cases that present issues that have never come before the courts before (issues of first impression), or that have an effect on large portion of the California population, or that have conflicting opinions in the various Courts of Appeal throughout the state. While it is possible that the Supreme Court will choose to review your case if you apply for review, you should not expect that they will hear it. In past years, only about 3% of petitions for review have been granted.<sup>10</sup>

## **The Remittitur**

The remittitur signals the end of the case. It is a document that says the review of the case is final and transfers the power of the reviewing courts (Court of Appeal and Supreme Court) back to the superior court so the superior court can follow up on what, if anything, still needs to be done to carry out the decision or decisions made by the reviewing courts. (CRC rule 26.)

If no petition for review is filed in the Supreme Court, the remittitur is issued 61 days after the filing of the opinion in the Court of Appeal (unless a request for publication was granted or there was a modification of the opinion resulting in a change in the judgment, in which cases the time is more than 61 days). At that time, the case becomes "final" in the reviewing courts. (CRC rules 24(b), 26(b), 28.2(c).)

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<sup>10</sup> The Supreme Court of California, "Internal Operating Practices and Procedures of the California Supreme Court," 2003.

If the opinion said you were entitled to costs on appeal, you must file a memorandum of costs in the superior court within 40 days of the mailing of a copy of the remittitur. (CRC rule 27(d).) Among other things, this memorandum lists all the costs you are asking the court reimburse.

# Sample Form C

## PROOF OF SERVICE BY MAIL INSTRUCTIONS FOR SUPERIOR COURT OR COURT OF APPEAL

Each document you prepare must be served on all counsel and self-represented parties in your case. The document must be served by mail or hand-delivered by someone who is over the age of 18, not a party to the appeal, and a resident of the county where the mailing or delivery occurred.

This sample form is for service by mail, which is the easiest and most common method of service. If you wish to have the document delivered in person instead of mailed, you may adapt this sample form by replacing line 3 with language indicating the name of the person(s) to whom the document was delivered, the date and time of delivery, and the address where the delivery occurred. (For sample language for a hand-delivery, see page 4, line 3b of [Sample Form F](#).)

All documents must be served on all attorneys of record and any self-represented parties. **If the document is a brief, you must also serve one copy on the Superior Court and five copies on the California Supreme Court. If the document is a brief or petition, you must serve one copy on any public officer or agency required to be served by CRC rule 44.5.**

### **How to serve a document:**

Make a copy of your document for each person or entity you must serve and enough copies for filing with the Court of Appeal. The person doing the mailing must complete the Proof of Service and attach an unsigned copy to each copy of the document being served. The person doing the service should mail a copy of the document to each person listed in the Proof of Service by depositing it in the United States mail with postage fully prepaid. The envelopes may be deposited in a United States post office or mailbox. The original document cannot be filed with the court until service has been completed by mailing the copies. After the envelopes have been deposited into the mail, the original Proof of Service should be signed and attached to the original document for filing.

### **Filling out the Proof of Service form:**

Fill out the case name, Court of Appeal case number, and Superior Court case number. If you are filing the document in the Superior Court, use the Superior Court case name. If you are filing in the Court of Appeal, use the Court of Appeal case name.

Fill out the name of the non-party over the age of 18 who will be doing the mailing.

On line 2, specify the residential or business address of the person doing the mailing, and check the appropriate line for residence or business.

On line 3, specify the date of the mailing, the name of the document being served (for example, "Appellant's Opening Brief"), and the place where the mailing took place. List the full names and addresses of all the parties or their attorneys to whom the documents are being mailed. If the

# Sample Form C

document is a brief, you must also serve the Superior Court, the California Supreme Court (4 copies). If the document is a brief or petition, you must serve any public officer or agency who must be served under CRC rule 44.5. These addresses must also be listed on the Proof of Service.

Date the Proof of Service, type or print the name of the person doing the mailing, and include the signature of the person doing the mailing.

**An original Proof of Service must be attached to every original document filed with the court. A copy of the Proof of Service must be attached to every document served on all counsel and self-represented parties.**

# Sample Form C

## PROOF OF SERVICE BY MAIL

CASE NAME: \_\_\_\_\_

COURT OF APPEAL CASE NUMBER: \_\_\_\_\_

SUPERIOR COURT CASE NUMBER: \_\_\_\_\_

I, \_\_\_\_\_ (*specify name of person doing service*), declare as follows:

1. At the time of service, I was at least 18 years of age and not a party to this legal action. I am a resident or employed in the county where the within-mentioned service occurred.

2. My residence or business address is (*specify*):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ residence \_\_\_\_\_ business

3. On \_\_\_\_\_ (*specify date*), I served the \_\_\_\_\_ (*specify document*) by United States mail as follows: I enclosed a copy in separate envelopes, with postage fully prepaid, addressed to each individual addressee named below, and I deposited each sealed envelope with the United States Postal Service in \_\_\_\_\_, California, for delivery as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
(*List addresses and send 1 copy to each party*)

California Supreme Court  
350 McAllister Street  
San Francisco, CA 94102  
(*5 copies of briefs only*)

\_\_\_\_\_ Superior Court  
\_\_\_\_\_  
\_\_\_\_\_  
(*List address of Superior Court and serve 1 copy of briefs only*)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
(*List address of any public officer or agency required to be served by CRC rule 44.5 and serve 1 copy of briefs only*)

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: \_\_\_\_\_

\_\_\_\_\_  
(*TYPE OR PRINT NAME*)

\_\_\_\_\_  
(*SIGNATURE OF DECLARANT*)

# Sample Form S

## PETITION FOR REHEARING - INSTRUCTIONS

After the opinion has been filed in your case, or a request for publication granted or modification of opinion changing judgment, you have 15 days to ask the Court of Appeal for a rehearing. You ask for a rehearing if you feel that the opinion misstates the facts, has an error of law, has a significant omission in the facts or law or failed to consider an important argument. There is an automatic right to rehearing if the Court of Appeal makes a decision based on an issue that was not proposed or briefed by any party. (Government Code section 68081.) The petition for rehearing has an orange cover. An original plus four copies of the petition for rehearing must be filed in the Court of Appeal. A proof of service showing service on the Supreme Court, the Superior Court and all counsel and self-represented parties must accompany the petition for rehearing.

### **Filling out the Cover Page:**

- (1) The plaintiff's name as it appears on your Superior Court caption.
- (2) Whether plaintiff is "appellant" or "respondent".
- (3) The defendant's name as it appears on your Superior Court caption.
- (4) Whether defendant is "appellant" or "respondent".
- (5) The Court of Appeal case number.
- (6) The Superior Court number from your Superior Court case.
- (7) Write the county where the Superior Court case originated.
- (8) The name of the Superior Court judge.
- (9) Your name.
- (10) Your mailing address.
- (11) Your city, state and zip code.
- (12) Your telephone number where you can be reached during the day.

### **Filling out the Petition for Rehearing:**

- (1) Your name.
- (2) Your mailing address.



# Sample Form S

- (3) Your city, state and zip code.
- (4) Your telephone number where you can be reached during the day.
- (5) The plaintiff's name as it appears on your Superior Court caption.
- (6) Whether plaintiff is "appellant" or "respondent".
- (7) The defendant's name as it appears on your Superior Court caption.
- (8) Whether defendant is "appellant" or "respondent".
- (9) The Court of Appeal case number.
- (10) The Superior Court number from your Superior Court case.
- (11) Write whether you are "appellant" or "respondent".
- (12) Your name.
- (13) The date the opinion was filed.
- (14) Why you think there should be a rehearing.
- (15) The arguments in support of your reason why there should be a rehearing.
- (16) Write "affirm", "reverse" or "modify", however you think the court should have ruled in its opinion.
- (17) Current date.
- (18) Your signature.
- (19) Type or legibly print your name.

**Due:** 15 days after opinion filed, or request for publication granted or modification of opinion changing judgment.

**Cover Color:** Orange

**File:** Original plus 4 copies with Court of Appeal with Proof of Service

Provide an extra copy to be file-stamped for your file.

**Serve:** California Supreme Court - 4 copies  
Superior Court - 1 copy  
All counsel  
All self-represented parties

# Sample Form S

COURT OF APPEAL, SECOND APPELLATE DISTRICT

DIVISION [Insert division #]

STATE OF CALIFORNIA

(1) \_\_\_\_\_,

Plaintiff and (2) \_\_\_\_\_,

v.

(3) \_\_\_\_\_,

Defendant and (4) \_\_\_\_\_.

(5) \_\_\_\_\_.

(Superior Court No. (6) \_\_\_\_\_)

Appeal From the Superior Court of (7) \_\_\_\_\_ County  
Honorable (8) \_\_\_\_\_, Judge

## PETITION FOR REHEARING

(9)

(10)

(11)

(12)

Self-Represented

# Sample Form S

(1)  
(2)  
(3)  
(4)

COURT OF APPEAL, SECOND APPELLATE DISTRICT  
DIVISION [Insert division #]  
STATE OF CALIFORNIA

(5) \_\_\_\_\_,

Plaintiff and (6) \_\_\_\_\_,

v.

(7) \_\_\_\_\_,

Defendant and (8) \_\_\_\_\_.

(9) \_\_\_\_\_.

(Superior Court No. (10) \_\_\_\_\_)

## PETITION FOR REHEARING

(11) \_\_\_\_\_, (12) \_\_\_\_\_, seeks rehearing of the  
court's opinion in the above case filed on (13) \_\_\_\_\_. The rehearing is necessary  
because (14) \_\_\_\_\_.

(15)

# Sample Form S

## CONCLUSION

Petitioner requests that rehearing be granted and that the court (16) \_\_\_\_\_, the judgment.

DATED: (17) \_\_\_\_\_

(18) \_\_\_\_\_

Signature

(19) \_\_\_\_\_

Type or Print Name

**An original Proof of Service must be attached to every original document filed with the court. A copy of the Proof of Service must be attached to every document served on all counsel and self-represented parties. (See [Sample Form C](#).)**